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8 Attorneys for Plaintiff  
ACTUATE CORPORATION

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 ACTUATE CORPORATION, a Delaware  
14 corporation,

Case No. C08-2918 SI,

15 Plaintiff,

16 v.  
**STIPULATION AND [PROPOSED]**  
**ORDER FOR FILING AMENDED**  
**COMPLAINT**

17 JPMORGAN CHASE BANK, N.A., a Delaware  
18 corporation, as Acquirer of Certain Assets and  
Liabilities of WASHINGTON MUTUAL BANK,  
a Washington corporation,

Complaint Filed: June 11, 2008  
Trial Date: December 7, 2009

Defendant.

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WHEREAS, the Complaint for Breach of Contract and Copyright Infringement was filed in this action on June 11, 2008;

WHEREAS, fact discovery closed on August 10, 2009, and trial is currently scheduled to begin on December 7, 2009;

WHEREAS, Defendant asserts various affirmative defenses, alleging that the October 2004 contract between the parties should fail;

WHEREAS, the purpose of the additional claim in the amended complaint is to make explicit on the record that Plaintiff seeks recovery under an equitable theory if Defendant's affirmative defenses proved successful (the parties reserve all of their respective arguments on these issues);

WHEREAS, the parties therefore agree that the filing of the amended complaint will not require modifying any of the currently scheduled deadlines or trial date, and will not require re-opening fact discovery;

WHEREAS, the undersigned parties wish to avoid burdening the Court with unnecessary motion practice and have agreed that Plaintiff may file the amended complaint in the form attached hereto as Exhibit A, which contains an additional claim for quantum meruit/quantum valebant;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned,  
subject to approval of the Court, as follows:

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2. Defendant shall be permitted to respond within 20 calendar days of the entry of the order on this stipulation.

Dated: August 11, 2009

**WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation**

By: /s/ Charles T. Graves  
Charles T. Graves

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One Market, Spear Tower, Suite 3300  
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Attorneys for Plaintiff  
Actuate Corporation

Dated: August 11, 2009

HOWREY LLP

By: /s/ Benjamin K. Riley  
Benjamin K. Riley

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Attorneys for Defendant  
JP Morgan Chase Bank, N.A., as Acquirer of  
Certain Assets and Liabilities of WASHINGTON  
MUTUAL BANK

## **ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of Court shall file the amended complaint, attached hereto.

IT IS FURTHER ORDERED that Defendant shall have 20 calendar days from the entry of this order to respond to the amended complaint.

Susan Illston

**Hon. Susan Illston  
United States District Judge**

1 I, Charles T. Graves am the ECF User whose identification and password are being used to file  
2 this STIPULATION AND [PROPOSED] ORDER FOR FILING AMENDED COMPLAINT. In  
3 compliance with General Order 45.X.B, I hereby attest that Benjamin K. Riley has concurred in  
this filing.

4 Dated: August 11, 2009

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6 WILSON SONSINI GOODRICH & ROSATI  
7 Professional Corporation

8 By: /s/ Charles T. Graves  
9 Charles T. Graves

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11 Attorneys for Plaintiff  
12 Actuate Corporation

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